



September 6, 2012

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *National Cable & Telecommunications Association Petition for Declaratory Ruling and Conditional Petition for Forbearance, WC Docket No. 11-118: Ex Parte Communication*

Dear Ms. Dortch:

On September 5, 2012, Genevieve Morelli, President of the Independent Telephone & Telecommunications Alliance (“ITTA”), spoke by telephone with Michael Steffen, legal advisor to Chairman Genachowski, and Micah Caldwell, Vice President – Regulatory Affairs of ITTA, spoke separately by telephone with Priscilla Argeris, legal advisor to Commissioner Rosenworcel, to discuss the National Cable & Telecommunications Association’s (“NCTA’s”) pending petitions¹ seeking relief from the buyout restrictions contained in Section 652 of the Communications Act of 1934, as amended.²

Although NCTA contends that the Commission should provide blanket relief from Section 652(b) because the local franchise authority (“LFA”) approval element of the Section 652(d)(6) waiver process impedes cable-CLEC transactions that would “strengthen competition

¹ NCTA Petition for Declaratory Ruling to Clarify 47 U.S.C. § 572 in the Context of Transactions Between Competitive Local Exchange Carriers and Cable Operators, WC Docket No. 11-118 (filed June 21, 2011); NCTA Conditional Petition for Forbearance from Section 652 of the Communications Act for Transactions Between Competitive Local Exchange Carriers and Cable Operators, WC Docket No. 11-118 (filed June 21, 2011).

² 47 U.S.C. § 572. Under Section 652, cable operators are prohibited “from acquiring more than a 10 percent financial interest, or any management interest, in any local exchange carrier providing telephone exchange service within such cable operator’s franchise area.” 47 U.S.C. § 572(b). However, the statute explicitly provides authority for the Commission, with the concurrence of the relevant LFA, to waive the buyout restriction for transactions whose anticompetitive effects are outweighed by public interest considerations. 47 U.S.C. § 572(d)(6).

vis-à-vis the dominant incumbent LEC,” this assertion lacks merit.³ Any argument that regulatory relief is necessary to allow cable companies to compete with “much larger” incumbent wireline carriers – represents a gross mischaracterization of the current domestic telecommunications environment.⁴

Incumbent local exchange carriers (“ILECs”) are hardly the “dominant” providers of local exchange service.⁵ The combined effect of cable’s increasing market share, the robust growth in interconnected VoIP service subscribership, and the overall shrinking of the wireline voice service market has had a dramatic impact on ILECs that NCTA completely ignores.⁶ Moreover, NCTA fails to acknowledge the simple truth that today’s incumbent cable operators are powerful, financially robust companies that constitute formidable competitors to ILECs.⁷ The Commission’s own subscribership data provides irrefutable proof that incumbent cable operators need no special treatment from regulators in order to compete effectively against ILECs.⁸

It takes enormous audacity for NCTA to argue that cable companies should be given a regulatory hand-out through a waiver of or forbearance from Section 652(b) as a means to “rekindle” competition for local exchange service.⁹ Before conferring additional competitive advantages on incumbent cable operators at the expense of ILECs, the Commission must ensure that NCTA has met its burden of demonstrating that such relief is necessary.¹⁰ NCTA has failed to do so in this case.

³ See Letter from Rick Chessen, National Cable & Telecommunications Association, Ross J. Lieberman, American Cable Association, and Mary C. Albert, COMPTel, to Marlene H. Dortch, FCC, WC Docket No. 11-118 (filed Mar. 20, 2012) (“NCTA, *et al.* Letter”), at 2.

⁴ *Id.* at 3.

⁵ See Letter from Genevieve Morelli and Micah Caldwell, ITTA, to Marlene H. Dortch, FCC, WC Docket No. 11-118 (filed Apr. 30, 2012), at 2.

⁶ See *id.* at 2-3.

⁷ *Id.*

⁸ See *Local Telephone Competition: Status as of December 31, 2010*, Federal Communications Commission, Industry Analysis and Technology Division, Wireline Competition Bureau (October 2011) (“October 2011 Local Competition Report”), at 2.

⁹ NCTA, *et al.* Letter at 5.

¹⁰ As CenturyLink pointed out in its reply comments, the inequity of providing the relief requested by NCTA would be compounded by “the fact that a cable operator securing an interest in a CLEC in its cable service area would also have the ability to secure interconnection, unbundled access, resale and collocation from the ILEC in that service area pursuant to Section 251(c),” thus “exacerbating the regulatory imbalance that already exists in favor of incumbent

Given that the purpose of Section 652 is to guard against situations where “consumers have even less choice rather than more,”¹¹ the Commission should refrain from taking action that would essentially provide wholesale approval of transactions that would eliminate a competitor from the market and create further disparities in regulatory treatment among service providers.¹² Neither result is consistent with the Commission’s obligation to ensure that waivers of the cross-ownership restrictions in Section 652 meet “the convenience and needs of the community to be served.”¹³

Please do not hesitate to contact me with any questions regarding this submission.

Sincerely,



Micah M. Caldwell
Vice President, Regulatory Affairs

cc: Michael Steffen
Priscilla Argeris

cable operators that compete with ILECs.” Reply Comments of CenturyLink, Inc., WC Docket No. 11-118 (filed Sept. 21, 2011), at 6, 8.

¹¹ 142 Cong. Rec. S693 (1996) (statement of Senator Leahy).

¹² Indeed, should the Commission consider granting the relief requested in the NCTA petitions, the only equitable course would be to ensure regulatory parity between cable operators and incumbent telephone companies by affording some form of corresponding deregulatory relief to ILECs.

¹³ 47 U.S.C. § 572(d)(6)(A)(iii).